Supreme Court, U.S.
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No. _____

In the Supreme Court of the United States

PAUL C. FRENCH

Petitioner,

v.

SHIRLEY JACKSON, ET AL.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

PAUL C. FRENCH

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QUESTIONS PRESENTED FOR REVIEW

ISSUE ONE

Does the Rooker-Feldman Doctrine override the Fourteenth Amendment as to Equal Protection and Due Process and more specifically on the Narrow Issue Concerning the Violation of Judicial Process and Procedure in State Court's, that results in the violation of Constitutional Guarantees and Federal Case Law, is Federal Review prevented by the Rooker-Feldman Doctrine?

ISSUE TWO

Are "governmental agents" in the performance of their official duties protected by unlimited Governmental immunity when intentionally engaging in illegal activity and negligent omissions?

ISSUE THREE

When an attorney or law firm representing Governmental Agencies, including those of the State of Michigan, [or lawful counties thereof], goes beyond the role of a "zealous advocate for his [their] clients" and become an active co-conspirator in the cause of their clients, is not that attorney or firm acting improperly under "Color of Law"?

PARTIES TO PROCEEDING

Petitioner: Paul C. French, Jr. (French) An individual and a non-attorney Shirley Jackson, Clerk [now retired] Van Buren County [State of Michigan] individually and severally with; Van Buren County, a governmental instrumentality of the State of Michigan, jointly and severally with; Dale Gribler, Sheriff of Van Buren County, State of Michigan, in his Official capacity, jointly and severally, are represented by Attorney Camille T. Horne (P59547), Plunkett & Cooney, Buhl Building, 535 Griswold, suite 2400, Detroit, Michigan, 48226-3684, phone (313) 983-4796 [Van Buren County, et al], all jointly and severally with other respondents herein;

Richard H. Winslow, attorney, (P22449) individually and severally with other respondents herein. Attorney Winslow is represented by Attorney Joseph Nimako (P47313), Cummings, McClorey, Davis & Acho, PLC. 33900 Schoolcraft Road, Livonia, Michigan, 48150, Phone (724) 261-2400;

Cummings, McClorey, Davis & Acho, PLC, a Law Firm in the State of Michigan, the "Firm" as an entity, jointly and severally with all other respondents herein. The firm is represented by Attorney Ethan Vinson (P26608) Cummings, McClorey, Davis & Acho, PLC. 33900 Schoolcraft Road, Livonia, Michigan, 48150, Phone (724) 261-2400;

George N. Stevenson, (P38795) Assistant Attorney General for the State of Michigan, individually and in official capacity, jointly and severally with; Paul Fischer (P35454), Executive Director, Judicial Tenure Commission, in his official capacity, jointly and severally with; John D. Ferry, State Court Administrator, individually and in his official capacity, jointly and severally, with the other responders

herein. George Stevenson, Paul Fischer and John Ferry are collectively represented by Attorney James Erwin Long (P53251) Assistant Attorney General for the State of Michigan, Public Employment and Elections Division of the Office of the Attorney General for the State of Michigan, P. O. Box 30736, Lansing, Michigan, 48909, Phone (517) 373-6436

Petitioner, as an individual, is not subject to Rule 29.6, concerning a Corporate Disclosure Statement.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Paul C. French, Jr., a non-attorney, in pro per, respectively petition for a writ of *certiorari* to review De Novo the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The Federal District Court

The United States District Court in Kalamazoo, Michigan, dismissed Petitioner's Complaint, finding no merit and ordering sanctions in the amount of $500.00.

This finding of the Federal District Court Petitioner asserts, was based upon other case law that concerned facts and circumstances different than the facts and circumstances at issue in Petitioner's Complaint. This opinion (app. d) and their order (app. c) found in favor of defendants by:

> Improperly dismissing the complaint on the basis of FRCP 12(b)(6) stating that it is clear no relief could be granted under any set of facts that could be proved consistent with the allegations, when in fact there was ample evidence to the contrary.
>
> Finding that, contrary to Appellant's assertion that Appellant's Complaint **was not** challenging an order of the State Court of Competent Jurisdiction, but rather asserting that the judicial process or procedure was violated, the primary issues were (contrary to

Appellant's assertion[1]), a challenge to the judgment of the State Court of Competent Jurisdiction and therefore was barred by the Rooker-Feldman Doctrine.

Ruling that Appellant had failed to exhaust all State Remedies while improperly ignoring *Roy Heck v James Humphrey Et Al.* S. Ct. 93-6188 [PP. 16 Pg. 2] that stated "exhaustion of state remedies is not a requirement to an action under 42 U. S. C. § 1983".See also *Patsy v Board of Regents of Florida,* 457 U.S. 196, 501, Ed. 2d 172,102 S. Ct. 2557

Holding that Appellant failed to alleged that state Remedies were inadequate, while Appellant had raised that very issue by stating any successful state appeal would bring the case back to the same Circuit Court Judge who had a personal bias of many years as revealed in a personally handwritten Order of Disqualification because of a personal bias along with an inability to find Appellant credible. (See App. # f). Returning a successful appeal to the very judge that

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[1] "This complaint concerns the violation of judicial process and procedures by various "State Actors" which so tainted the judicial process resulting in numerous and intentional violations of the Fourteenth and other Amendment protection for French. Such assertions are not barred by the Rooker Feldman Doctrine as this complaint is not a challenge to an Order of a State Court of Competent Jurisdiction but the process. See PP 402 Page 159 of the Complaint in the U.S. District Court. This violation by "State Actors" is repeatedly asserted in the Complaint and confirmed by very detailed proofs. This issue is clearly raised on page 3 under issue one and through-out French's Complaint in the U. S, District Court.

allowed violation of the process is clearly an assertion that the state remedies were inadequate.

Ruling that government agents in pursuit of their official duties had unlimited immunity, even when engaging in various illegal acts, including malfeasance, misfeasance and nonfeasance.

Ruling that an attorney (or firm by inference) could not cross the line and operated under color of law, even if they were over zealous in their representation of clients, but ignoring the narrower issue when the client or clients were governmental entities or, in a fact specific case, certain quasi-governmental agencies.

Ruling that Appellant had filed a frivolous suit and therefore imposed financial sanctions on Appellant, which Appellant then paid.

The Sixth Circuit Court of Appeals

Although the Sixth Circuit did not add sanctions, they affirmed the order of the U.S. District Court and dismissed Appellant's civil rights complaint filed under 42 U.S.C. § 1983.

In affirming the lower federal court, the focus was again primarily on the Order of the State Court of Competent Jurisdiction, totally ignoring the primary issue raised by appellant who asserted the real issue was the violation of the judicial process and procedures that Appellant's Fourteenth

Amendment right were violated [2]. See app. # b for a copy of the order of the Sixth Court of Appeals.

Petitioner filed a motion for reconsideration that was denied in an order filed March 21, 2005. See App. # a, for a copy of that order.

Because the issues raised in the original appeal to the Sixth Circuit were not addressed by the Sixth Circuit Court in the original order of the Sixth Circuit (App. # c), nor were these issues addressed in Petitioner motion for reconsideration, that the Sixth Circuit denied, Petitioner moved the Sixth Circuit for De Novo reconsideration En Banc, but that motion was not accepted by the Sixth Circuit Court.

JURISDICTION

On January 27, 2005 the Judgment of the Federal Circuit was entered and is enclosed as App. # b.

An unpublished order denying panel rehearing was entered on March 21, 2005 is enclosed as App.# a

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[2] In response to a questionnaire from the Sixth Circuit that asked of appellant in preparing the appeal, "Do you think the District Court applied the wrong law?" to which appellant replied yes, asserting that the Rooker-Feldman Doctrine should not apply in this matter as the issue was not a challenge to the Order of a State Court of Competent Jurisdiction, but rather the repeated violation of the judicial process by various "State Actors" and other defendants and these assertions are not precluded by the Rooker-Feldman Doctrine.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

First Amendment: Provides for "Religious freedom, freedom of speech". The demeaning of one's rights to 'religious freedom' and 'free speech' as in this case is a denial of the protection granted by the First Amendment.

Sixth Amendment: In all Criminal Prosecutions, the accused shall enjoy the right to ...be confronted with the witnesses against him.... The gag order issued by Judge Buhl, violated this amendment by preventing him [French] from placing before the jury facts which bias, prejudice, or lack of credibility of prosecution witnesses may be inferred, *People v. Davis*, 91 Mich. App. 434.

Fourteenth Amendment. Section 1.All persons born or naturalized in the United States, and are subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law [State action in any form, whether by statute, act of executive department of state or local government or otherwise, will not be permitted to impede, delay, or frustrate proceedings to protect right guaranteed to members of all races under the Fourteenth Amendment (*Brady v Miliken*, 433 F2d 897). Equal protection clause of the fourteenth amendment applies to all state actions, and it does not apply in watered down versions to some forms of state action. *Stapleton v. Clerk for the City of Inkster*, 311 F Supp 1187.

Michigan Statute, MCL 691.1407 (1) (1987) subsection (2) [which covers immunity for individuals] shall not be construed as altering the law of intentional torts as it existed before July 1986")

STATEMENT OF THE CASE

ISSUE ONE

This case concerns several issues flowing out of trials in the Circuit Court for Van Buren County in the state of Michigan. The issues raised herein and in the lower federal courts, are not challenges to the "Order" of a State Court of Competent Jurisdiction, but rather, the very narrow issue concerning the violation of the judicial process and procedure that led to orders which Petitioner alleges to have been "procured through fraud, deception, accident or mistake" as found in *Resolution Insurance Co. v State of North Carolina,* 397 F 2d. 586, 589 (4th Cir.1968).

In *Robert S. Catz v Susan R. Chalker* File name: 98a0116p.06 (6th Cir. 1998) the Sixth Circuit Court dealt with "a similarly narrow issues" concerning the manner or process in which the State Court had acted. Even though *Catz v Chalker, et al, Supra* revolved around issues of "Divorce and property, the issue raised in the sixth circuit dealt more with the violation of the process that is not protected from Federal Review by the Rooker-Feldman Doctrine.

On page 12 of this case, *Supra* the sixth circuit found that the challenge was not a challenge to the judgment of the State Court of Competent Jurisdiction, but to the process and that challenge to the process is not barred by the Rooker-Feldman Doctrine, see page 13 of this case, where the court found,

"catz's due-process allegation does not implicate the merits of the divorce decree, only the procedures leading up to it."

Furthermore, on page 13 the sixth circuit found that "Here, the claims that survive preclusion, as outlined above, are directed to the procedures used by the Arizona court, procedures that Judge Echols found, if true to be 'shocking' (J.A. (11) at 154 n. 7). Thus, permitting jurisdiction in this case does not contravene the heart of the Rooker-Feldman Doctrine, namely the prohibition of reviewing the substance of the state court judgment. *Sun Valley Foods Co. v. Detroit Marine Terminals, Inc.*, 801 F 2d. 186-89 (6th Cir.1986).

In *Pennzoil Co. v Texaco, Inc.* 481 U.S.1 on appeal from the second Circuit, [*Pennzoil Co. v Texaco, Inc.*, 784 F 2d. 1133, 1144 (2d Cir. 1986)] had held that Rooker does not bar a federal court from exercising jurisdiction over claims that certain state provisions "deny Texaco due process and equal protection as applied. Those claims have never been presented to, or adjudicated by this court. Nor are they 'inextricably intertwined' with the barred claims." Once the claims that are barred by claim preclusion are excised from this case, exactly the same thing can be said of *Catz v Chalker, et al, Supra.*

The Supreme Court did not specifically rule on the Second Circuit's holding in *Pennzoil Co. v Texaco, Inc. Supra,* although the Second Circuit holdings were supported in a serried of individual concurrences.

In *481 U.S* 1 Supra: at 18 (Justice Scalia and O'Connor); id at 21 (Justice Brennan and Marshal); id at 27-28 (Justice Blackmun); id at 31 n.3 (Justice Stevens and Marshall). Six individual justices concurred that the Rooker-Feldman Doctrine does not bar a federal court from exercising

jurisdiction over claim of violation of the process in state court.

Richard H. Fallon, Jr., et al., states in Hart & Wechsler's The Federal Courts and the Federal System 1504 (4th ed. 1996) (A "majority of the Justices explicitly rejected" Pennzoil's argument that "the rational of the Rooker-Feldman doctrine, properly understood, denied the lower federal courts any authority to displace state courts....")

In particular, as Justice Marshal stated, 481 U. S. at 25, "{w}here federal relief can only be predicated upon a conviction that the state court was wrong" a federal proceeding would be prohibited appeal. However, the narrow remaining claims of the alleged procedural violation of catz's (*Catz v Chalker, et at., Supra*) constitutional rights do not rest on any substantive wrongness of the ruling of the Arizona courts, and the Rooker-Feldman doctrine does not bar the maintenance of this action.

JUST HOW WAS THE PROCESS VIOLATED?

BY ACTS OF MALFEASANCE

Assistant Attorney General for the State of Michigan, George N. Stevenson [hereinafter "AAG"], committed several acts of Malfeasance by violating the law in the following ways and instances that individually and collectively resulted in denying Petitioner Constitutional Right to equal protection and due process under the law, thereby destroying the judicial process and procedures by:

1. Intentionally withholding significant exculpatory evidence from the court, the jury, and the Defense in violation of *Brady V Maryland* 373 U.S. 83, 83 S. CT. 1194, 10 L.

EF. 2d 215. Some 48-50 cases of documents, many original documents, were seized by the AG amounting to some 40-50,000 documents seized yet less than 100 documents were offered as exhibits. See also App. e, for two affidavits of Attorney Olson.

2. Some of the exculpatory documents withheld by the AAG proved French's innocence, by establishing that payments made and/or expense incurred on behalf of Public Guardian of West Michigan [hereinafter called "PGWM", a now defunct corporation previously wholly owned by Petitioner], or made by other corporation or repayments made to these other corporations, [all now defunct corporations previously wholly owned by Petitioner], for;

   a. Authorized payroll services and payments made to employees of PGWM by French Development Corporation Inc., [hereinafter called FDC], now defunct, that was previously wholly owned by Petitioner.

   b. Authorized payments by FDC to outside contractors for "home care services" to wards of PGWM.

   c. Authorized accounting and Tax services for PGWM that was provided by French and VanderBroek, PC, [hereinafter "F & V"], now defunct in which Petitioner was the Managing Partner and majority owner,

   d. Withholding of funds received by PGWM from SSI on behalf of recipients who were residents of Evergreen Manor, Inc.[hereinafter EMI, a now defunct corporation previously wholly owned by Petitioner] to cover monthly charges for room, board, personal care

and other specialized services in EMI, [an Adult Foster Care Facility previously licensed by the State of Michigan]. This was at the request of Social Security as they did not believe the individuals for whom such payments were being made, were able to manager these funds. The bulk of these payments were to pay for current EMI charges for caring for those residents in EMI.

e. Although each of these payments were improperly found to be "acts of Embezzlements" even if these legitimate payments had not been alleged to be evidence of embezzlement [which was done contrary to exculpatory documents in the possession of the AAG that proved differently], there was and still remains payments due to two of the now defunct corporations mentioned above, [FDC in the amount of $133,688.00 and EMI in the amount of $39,500.00] for a total under-repayment of $173,188.00 that was owed by PGWM for services.

f. A cash shortage in PGWM reflected the partial effects of the alleged $600,000.00 Defalcation by Ken Ratzlaff and Patricia Jones along with the alleged misappropriation of at least $108,000.00 by Amy Lake and Tom Cole and not as the result of any improper acts by French.

3. Efforts by Defense Attorney Jessie N. Olson (P44879) to have access to and to review those documents were intentionally thwarted by the AAG. See App. # e for the two Sworn Affidavit of Michigan Attorney Olson;

4. By denying Attorney Jessie N. Olson open access to these documents, this was a clear violation of the Michigan

Rules of Professional Conduct [MRPC], specifically rule 3.4 (a) "unlawfully obstruct another party's access to evidence, unlawfully alter, or conceal a document or other material having potential evidentiary value, or counsel or assist another person to do any such act". Making a show of allowing access and at the same time ensuring that not enough time was allowed to make a meaningful inspection [due to the way dozen of boxes were stored with thousands of unsorted and uncategorized documents] is tantamount to allowing no access at all. This denial and thwarting of access by AAG Stevenson was an act in malfeasance that resulted in destroying the Judicial Process and contrary to the findings in *Brady v Maryland, Supra.*

5. Failing to disclose the "agreement" with Ken Ratzlaff and Patricia Jones. Openly denying the existence of any "deal for testimony's against Petitioner in response to a written request the jurors submitted to the Judge, while the Jury was sequestered and deciding the case, asking if any witnesses for the Prosecution's had any reason to lie"? See app. e.

   This "deal" was for Ken Ratzlaff and Patricia Jones to testify for the prosecution, in exchange for dismissing a criminal complaint. French filed a criminal complaint with the Michigan State Police, alleging that Ken Ratzlaff and Patricia Jones, former officers of a now defunct EMI, had by Defalcation embezzled in excess of $600,000.00 from Petitioner.

   The deal made by the AAG to dismiss criminal charges in exchange for testimony was legal, but the failure to disclose the "Plea Bargain deal" and even more importantly is that the prosecutor, repeatedly denied to the

Jury the existence of this "plea Bargain" to dismiss charges in exchange for testimony against French, and affirming that no witnesses for the prosecution had any reason to lie, clearly made a mockery of the Judicial Process.

6. Petitioner had also filed a criminal Complaint with the Michigan State Police, naming two-former employees of PGWM Amy Lake and Tom Cole who were alleged to have engaged in "irregular financial activities and misuse of corporate funds in excess of $108,000.00.

7. The AAG also offered a plea bargain to Amy Lake and Tom Cole to dismiss the criminal charges in exchange for testifying for the prosecution. Even while denying the existence of these "deals", AAG Stevenson stated in the presence of Judge Buhl and Attorney Olson, that as prosecutor, he was required to disclose any such "deals" if they existed (see app. e). This represented an intentional act in Malfeasance that also violated the judicial process while violating Petitioner's constitutional rights.

8. By such acts, AAG Stevenson intentionally and knowing violated MRPC, rule 3.3 (a) (1) which states "A lawyer shall not knowingly make a false statement of material fact or law to a tribunal" (MRPC-rule 3.3 (a)(1)). A further act in Malfeasance that destroyed the judicial process.

9. The AAG wanted to prevent the Jury from finding out that certain "key witnesses" had reasons to lie [in order to avoid possible incarceration for their alleged Defalcation and misappropriation of funds]. To accomplish this goal, the AAG sought and received an order from Judge Buhl prohibiting the defense from asking any questions or

raising any issues that might cause the jury to have reason to question the veracity of prosecution witnesses knowing of the two criminal complaints filed by Petitioner and the deal to testify in exchange for dismissing those criminal complaints (see app. e).

10. Anything Petitioner could say about these false charges and the reasons why certain "key witnesses for the Prosecution" had reasons to lie, or to make any statements in his own defense, would have put Petitioner in violation of the "gag-order" requested by the AAG and granted by Judge Buhl. This gag order was contrary to *People v Davis* 91 Mich. App. 434 [requiring that a defendant have opportunity to confront any witnesses and ask questions of that witness and also a violation of the rights guaranteed by the Sixth Amendment a violation of the Judicial Process This "gag order" deterred this Petitioner from taking the stand in what appeared to be a "Kangaroo Court" in an atmosphere created by the illegal actions of the AAG.

11. During the final summation, the AAG repeatedly perjured himself, by assuring the Jury that none of the witnesses for the Prosecution had any reason to lie, while at the same time also failing to reveal a Plea Bargain to dismiss all criminal charges against Amy Lake and Tom Cole in exchange for an agreement to testify for the Prosecution had been made. This occurred , even though the AAG acknowledged that "as a Prosecutor, he was legally obligated to disclose" such a deal, if it existed, which the AAG denied.. A continuing violation of the judicial process (see app. e).

`Van Buren County Judge Buhl, engaged in arbitrary and wholly irrational actions that had no legitimate state purpose

Esmail V Macrane 53 F. 3rd 176 (7th circuit, 1995) violating the Fourteenth Amendment, by treating Petitioner differently than others in similar circumstance as found in *Village of Willowbrook v Olech S. Ct. 98-1288* and in *Hilton V City of Wheeling* 209 F. 3rd. 1005 (7th Circuit 2000). Such acts violated due process (when Petitioner was entitled to that Constitutional protection), and violated the Judicial Process and the Fourteenth Amendment by these acts as found in *Sioux City Bridge Co. V Dakota County* 260 U.S. 441 (1923), by:

1. For example of how this long term vendetta and bias of Judge Buhl, led Judge Buhl, in a civil *Paragon Bank and Trust Company vs Paul C. French, Jr. Van Buren Circuit Court* 98-44-972-ck-B) to become a "fact-finder" in this civil matter, in which a jury trial was requested, (but not impaneled although the fee had been paid) who ruled that there were no issues of unresolved material facts when there were many unresolved issues of material facts.

   Based on this illegal action in hearing a property matter, as a fact-finder in a jury trial, (since the court was not unbiased [see app. f] as required by *Herman v Chrysler Corp* 106 Mich. App. 709, 308 NW 2nd 616 (1981) when dealing with property, yet the court proceeded to deal with a property matter and improperly granting Summary Disposition to Plaintiff in *Paragon Bank and Trust Company vs Paul C. French, Jr. Supra.*

   The court then ordered the Van Buren County sheriff to sell at auction substantial real and personal property worth millions of dollars, but Judge Buhl failed to issue a final appealable order, (see app. i).

Finding that there were in fact "unresolved material issues of facts", the court created a new case "*Paragon Bank and Trust Company vs Paul C. French, Jr. Van Buren Circuit Court* 99-46-044-CK" out of the original case (*Paragon Bank and Trust Company vs Paul C. French, Jr. Van Buren Circuit Court* 98-44-972-ck-B) in order to adjudicate the unresolved issues. This was still not an appealable order, (see app. j). The sheriff's sale occurred on September 21, 1999. Nothing could be more final than that sale of all the real and personal assets involved. in that case.

Having done these acts, Judge Buhl in a handwritten Order of Disqualification, recused himself from further action on these then remaining issues, because of his long standing personal bias against French and the inability of the court to find French credible, see app f.

When the criminal matter arose, then Chief Judge Buhl, refused to recuse himself [even based upon his own memorialization of a some "twenty year plus" personal bias towards Petitioner and the court's inability to find Petitioner credible], or when requested by Attorney Olson to do so, (see app. e) Judge Buhl proceeded to hear the criminal charges against French, a clear violation of Judicial Canon # 3 under the facts and circumstances and this further violated the Judicial Process.

2. It is not clear if the court knew of the duplicity of the AAG in asking for the "gag order", but in any event, there is no evidence that any questions were asked by the court as to why such a "gag order" was needed, if there were no convictions on any of the prosecution witnesses.

This certainly is a legitimate question for Petitioner to raise, based upon the admitted bias of Judge Buhl, a bias that had festered for more than twenty years. Of course if the judge was knowledgeable about the deal, then Judge Buhl's acts were acts of Malfeasance.

ACTS OF MISFEASANCE

1. Assistant Attorney General Stevenson agreed to dismiss charges against Ken Ratzlaff, Patricia Jones former Officers of now defunct corporations wholly owned by Petitioner and to separately dismiss criminal charges against Amy Lake and Tom Cole in exchange for testimony against Petitioner, although a legal act but then intentionally withhold notice of those plea bargains from the defense, the jury and possibly the judge [this was an act in misfeasance], and a further violation of the Judicial Process.

2. Based upon a motion of AAG Stevenson, Judge Buhl granted a gag order against Petitioner from asking any questions or raising any issues that might cause the Jury to question the truthfulness of any witness or witnesses of for the prosecution.

3. Even before any indictment against Petitioner, Petitioner filed criminal complaints against five former employees [two of whom were corporate officers] alleging embezzlement, defalcation and misappropriation that collectively involved over seven-hundred-thousand dollars [$700,000].

   AAG Stevenson had quashed those criminal complaints in exchange for testimony against Petitioner's alleged embezzlement of $99,000, which was just part of sums

due various corporations owned by Petitioner who had provided payroll and other services to PGWM and leaving over $173,000.00 collectively unpaid to FDC and EMI.

4. Knowing of Petitioner's openly public Christian stand, AAG, and others, sought to complete the destruction of Petitioner along with Petitioner's various wholly owned corporations that had collectively employed over 100 men and woman all with good rates of compensation and company provided fringe benefits.

5. AAG Stevenson understood that if the jury knew "of the deal, it could raise numerous questions as to the veracity of "Key Witnesses for the Prosecution" and the AAG intentionally even lied to the jury in order to cover up and mislead the jury by saying "there was no deal", further violating the Judicial Process, (see app. e).

6. Granting this motion to deny Petitioner the right to questions witnesses was an act in Misfeasance by Judge Buhl, but if Judge Buhl was knowledgeable about the plea bargain, then granting the gag order was an act in Malfeasance by Judge Buhl. In either case this act was a further violation of the Judicial Process.

ACTS OF NONFEASANCE

1. Van Buren County Circuit Court Judge, William C. Buhl, having maintained and nurtured his long-term personal bias against Petitioner, [based upon a bench trial in which Petitioner testified as a CPA, in the mid 1970's], Judge Buhl finally memorialized his personal bias in an "Order of Disqualification" in his own handwriting [see App. # f)

2. Collectively, this memorialized fact, along with the combined acts of Malfeasance, Misfeasance and Nonfeasance contributed to creating a "Kangaroo Court" atmosphere, that also resulted in violating the Judicial Process as further illustrated by the additional examples:

   a. Judge Buhl refused to recuse himself from trying Petitioner, even when requested to recuse himself by Attorney Olson (see App. # e).

      1. Statements that Judge Buhl could be fair, even though biased, is belied by a hearing held concerning a sheriffs sale of real and personal property contrary to *Herman v Chrysler Corp* 106 Mich. App. 709, 308 NW 2nd 616 (1981) which to assure due process, required a hearing before an "unbiased trier of facts", which Judge Buhl was admittedly not. (See App.# f).

      2. Judge Buhl failed to withdraw from handling any case involving Petitioner or corporations in which Petitioner held a significant financial interest, except Judge Buhl did recuse himself from [*Paragon Bank and Trust Company vs Paul C. French, Jr. Van Buren Circuit Court* 98-46-044 CK], the case created and severed out of *Paragon Bank and Trust Company vs Paul C. French, Jr.* Van Buren Circuit Court 99-44-972-CK

         For this newly created case, 99-46-044 CK Judge Buhl then prepared a hand written Order of Disqualification, (see App. # f) after violating *Herman v Chrysler Corp, Supra* and clearly a violations of the spirit and wording of Michigan Judicial Canon 2 (b) and 2 (C), further violating

the judicial process and the constitutional rights of Petitioner and a further act of nonfeasance as to case #99-46-044-Ck *Supra* and an act of malfeasance as to case 98-44-972-ck-B, *Supra*.

3. The Judicial Tenure Commission for the State of Michigan failed to act to protect the rights of Petitioner, when requested by Petitioner, stating after investigation that there was no indication that Petitioner was at risk in a trial in which Judge Buhl, who had a long standing stated bias against French, was presiding, was a clear act of nonfeasance. (See App. # g).

4. The State Court Administrator [hereinafter SCA], for the State of Michigan failed to act to protect Petitioners right to a fair trial when Judge Buhl had in his own handwriting admitted his long term personal bias and an inability to find French credible, a clear act of nonfeasance when a simple transfer of the case to a judge not tainted by personal bias and "an inability to find French credible" (See app. # f) a clear violation of judicial canons [#s 1, 2(b), 2(c) & 3] for not seeking an unbiased judge, instead the SCA simply replied to the request by French, "you can always appeal"!

HOW THE VIOLATION OF PROCESS VIOLATED PETITIONER'S CONSTITUTIONAL RIGHTS A BRIEF SUMMARY

Petitioners right to a fair trial in accordance with the Fourteenth Amendment was violated by:

1. Intentional withholding of exculpatory evidence by the Prosecutor in violation of *Brady v Maryland, Supra.*

2. Intentional and surreptitious withholding of such exculpatory documents by the AAG from the Defense Attorney Jessie Olson. (see Sworn Affidavits of Attorney Olson, App. # e).

3. Withholding from the Jury, the court and the Defense by the AAG information of a "deal" dismissing criminal charges in exchange for testifying for the Prosecution and then denying any such deal existed when asked by the Jury if any witnesses for the prosecution may have any reason to lie. (See App. # e)

4. Repeatedly making perjuriously false statements to the jury, by the AAG during his "Final Summation", asserting that all the prosecution witnesses were telling the truth and that none of the prosecution witnesses had any reason to lie.

5. Seeking and obtaining a gag order from the Judge by the AAG to avoid the defense from "Spilling The Beans" in bring forth the truth that several of the Prosecution witness had real reasons to lie.

6. By poisoning the waters the AAG assured that the Petitioner would be unable to testify in his own behalf, by the combined acts of the Prosecutor and the Judge, there was nothing positive that Petitioner could say on the stand without violating the gag order and therefore in directly denying Petitioner the right to testify on his own behalf to overcome lies and falsehoods intentionally planted by the Prosecutor.

7. By the improper classification of Petitioner's Appeal to the Federal District Court, as a challenge to an order of a State Court of Competent Jurisdiction, even though the Complaint filed by Appellant reads "The District Court erred in applying the Rooker-Feldman Doctrine to this case as Plaintiff was not contesting the Order of a State Court of Competent Jurisdiction." [see page 3 of 29 pages in Appellant's brief to Appellant's Appeal to the Sixth Circuit Court and "Plaintiff's Complaint filed under 42 U.S.C. § 1983 that concerned numerous violations of Plaintiff's Constitutional rights guaranteed by the First, Sixth, and Fourteenth Amendment to the U. S. Constitution and the failure of the 'system' that intentionally violated the U. S. Constitution" (see also page 2 of 29 pages of Appellant's brief to Appellant's Appeal to the Sixth Circuit Court].

8. By a judge who held a "grudge" for over twenty years recalling Appellant early testimony in a bench trial as a CPA, testifying in accordance with GAAP, which testimony, in the eyes of a then Michigan State District Judge Buhl, "voodoo economics".

   Apparently District Court Judge Buhl did not then understand GAAP and must have felt such testimony was an affront to his ego. Who when the opportunity came to become a fact finder in a civil trial by jury [in which the jury fee had been paid and timely requested] to foreclose on substantial business property of Defendant French (and EMI, a then wholly owned corporation of Defendant French) [*Paragon Bank and Trust Company vs Paul C. French, Jr. Van Buren Circuit Court* 98-44-972-ck-B], *Supra*, an opportunity to redress this larger than life vendetta. Judicial Canon 2 (B) & (C) not withstanding, the judge found a way to sell that property, contrary to

Herman v Chrysler Corp, Supra which required an unbiased hearing for due process and also violating the Judicial Process.

9. Later when French was indicted, Judge Buhl with his long-term vendetta against French and even though the judge had already overseen the illegal "disposition of real and personal property" with a still unsatisfied vendetta, stepped up to the plate, biased or not, and once again violating the Judicial Process.

10. Clearly Defendant French and Appellant French were treated differently than others in similar positions in violation of the finding by the U.S. Supreme Court in *Village of Willowbrook v Olech* 98-1288 (2000) even though French was a "party of one".

11. When the process is violated, constitutional rights and other laws are ignored. Justice is not served under these circumstances.

IMPROPER APPLICATION OF GOVERNMENTAL IMMUNITY

ISSUE TWO

Are "governmental agents" in the performance of their official duties protected by unlimited Governmental immunity when intentionally engaging in illegal activity and negligent omissions?

Petitioner answers NO! Lower Federal Courts answered YES!

Case law and Michigan Statues support Petitioners

assertion that the lower Federal Court's ruling in this case reverses earlier Federal and State Appellate case law and Michigan Statutes.

In *Larry Lucas, et al v Monroe County, et al* Sixth Circuit 98-1876 (2/18/2000) in a case involving the Sheriff and a towing company, the Sixth Court of Appeals found that Michigan does not grant immunity to governmental employees that are, or become, engaged in illegal activities while performing the duties of their office.

In " *Koehler v Smith* WL 595085 (6th Circuit Sept 25, 1997) (unpublished disposition) the court found that "Michigan does not immunize its governmental employees, including police officers, from their intentional torts".

See also *California v Blake* 438 U.S. 265 (1978), *Shelly v Kramer* 334 U.S. 1 (1948) and *Sioux City Bridge Co. V Dakota County* 260 U.S. 441 (1923) concerning improper and capricious acts of governmental employees.

In *Sudul v City of Hamtrack,* 562 N. W. 2nd 478, 479 (Mich. Ct. App. 1997) concerning a governmental employee, the court held that "an individual employee's intentional torts are not shielded by our government immunity Statute"

Michigan Statutes, MCL 691.1407 (1) (1987) subsection (2) [which covers immunity for individuals] shall not be construed as altering the law of intentional torts as it existed before July 1986").

ISSUE THREE

When an attorney or law firm representing Governmental Agencies, including those of the State of Michigan, [or lawful counties thereof], goes beyond the role of a "zealous advocate for his [their] clients" and become an active co-conspirator in the cause of their clients, is not that attorney or firm acting improperly under "Color of Law"?

Petitioner says YES! Lower Federal Courts say NO!

This is a more-narrow issue than the general issue that an attorney cannot operate under color of law because:

1. In cases involving individuals, including individuals in small businesses ["schedule C"], partnerships, corporations of all types, but **specifically excluding** governmental or [in fact specific cases] Quasi-governmental organization and agency's, those parties can not and do not "operate under color of law".

   Therefore no matter how involved the attorney may become, or the attorney becomes entwined in the activities of his or her client, the attorney cannot "operate under color or law". Therefore, a finding that attorney's cannot act under color of law, under these fact specific circumstances, makes sense and eliminates unnecessary federal appeals.

2. However, when the client is a governmental entity, agency, or [in fact specific cases] Quasi-governmental organization and agency, who can and do operate under "color of Law", then again under fact specific cases, where an individual attorney and or firm goes beyond

'being just over zealous", Petitioner asserts that the specific attorney and/or that firm can and may be operating "under color or law".

Petitioner asserts that this is exactly what happened when the Attorney Richard Winslow and the firm of Cummings, McClorey, Davis and Acho represented Community Mental Health Board of Van Buren County, Michigan and at least one employee, Tim Hakken.

Tim Hakken a disgruntled former employee had returned to work for the Community Mental Health Board of Van Buren County, an agency of the then Department of Mental Health for the State of Michigan.

In a suit involving EMI and Petitioner, (*Evergreen Manor, Inc. a Michigan Corporation, and Paul C. French, Jr. an individual, Plaintiffs v Paul Cartwright, et al, Defendants,* case # 99-90073-CZ [this suit was originally filed in Ingham County Circuit Court and then transferred to Van Buren Circuit Court, Judge Buhl sitting]), Tim Hakken and others were directly involved in conspiratorial and Tortious acts of unlawful interference with the business relationships of Plaintiff's along with the relationships of Plaintiffs with employees.

During that time period, Tim Hakken and other employees of the Community Mental Health Board for Van Buren County [part of the "et. al" in the Paul Cartwright, et al, supra] along with the co-conspiracy of Attorney Richard Winslow and the firm of Cummings, McClorey, Davis and Acho, PLC, actively sought to demean French, by among other things, publicly issuing a "Request for Admission", under MCR 2.312, intending to demean, besmirch and discriminate against Petitioner's openly Christian Stand (see

app. # h) and in violation of MRPC rules: 3.4 (d), 3.4(e) and 4.4.

SUMMARY AND CONCLUSIONS

Issue One, "Violation of Process"

Petitioner has asserted and supported with credible proofs and exhibits that the various parties intentionally performed acts of commission and omission that violated the judicial process and procedures, effectively producing a result that was "procured through fraud, deception, accident or mistake" as found in *Resolution Insurance Co. v State of North Carolina, Supra.*

These various acts of Malfeasance, Misfeasance and Nonfeasance, are illustrative of the kind of violation raised in the narrow issue of actions that violated the Judicial Process or procedure and led to serious violations of the constitutional rights guaranteed by the Fourteenth Amendment. Clearly, such acts should be subject to federal review, an action that is not barred by the Rooker-Feldman Doctrine.

A number of Supreme Court Justices looking at the Second Circuit Court holding in *Pennzoil Co. v Texaco, Inc. Supra* even though this case was not formally ruled on, were supportive of this case in a series of individual concurrences [Page 4 of this motion]

In *Catz v Chalker, Supra*, PP 12, 13 the Sixth Circuit found that allegations if the Judicial Process or Procedure had been violated, would be regrettable and certainly federal review would not be barred by the Rooker-Feldman Doctrine.

Petitioner asserts that such federal review should be ordered by this court and after review by the Sixth Circuit appropriate should be taken to rectify the damages caused by these violations of process.

Issue Two, "Unlimited Immunity"

The issue of unlimited immunity for governmental agents engaged in Tortious and other Illegal is clearly wrong and clearly has been previously settled in such cases *as Brady v Maryland, Supra; Larry Lucas, et al v Monroe County, Supra; Koehler v Smith, Supra; California v Blake, Supra; Shelly v Kramer, Supra; Sioux City Bridge Co. v Dakota County, Supra; Sudul v City of Hamtrack, Supra;* and even by Michigan Statute for Michigan governmental agents in *MCL 691.1407 (1) 1987 sub-section (2).*[P 11-12]

Issue Three, "Color of Law"

Petitioner asserts that the matter in the "Color of law Issue" is a very narrow issue, that needs clarification when it involves governmental agencies. Only governmental and related entities can operate under color of law, and in those cases Petitioner believes and asserts that a more narrowed definition needs to be articulated in accordance with in the way that Petitioner has proposed by way of argument, in this motion for a *Writ of Certiorari.* [P 13-14]

WHY THIS WRIT FOR CERTIORARI SHOULD BE GRANTED

1. Several Justice's have indicated concurrence with the issue that "violation of Judicial process or procedure that violates constitutional rights including the Fourteenth

Amendment is not protected by the Rooker-Feldman Doctrine.

2. There is and has been numerous instances of media coverage concerning known acts in Malfeasance, Misfeasance and nonfeasance, in violation of law by government actors under the guise that the end justifies the use of illegal acts while asserting unlimited governmental immunity even when such acts were, on their face, illegal. This public demonstration of interest was portrayed on several occasions on the Fox New Channel, also by such networks as CBS ["Sixty Minutes"], and NBC ["Date Line"] in several Newspapers and on several National Radio talk shows.

3. Over zealous attorneys have used the superficial protection of "Color of Law" to avoid accountability when in fact they were personally or corporately involved and had become active co-conspirators in such illegal activities when representing Governmental Agencies and related quasi-governmental agencies in fact specific instances.

CONCLUSION

Therefore, the Petition requests the above Petition for Writ of Certiorari should be granted.

Respectively submitted,

Paul C. French, Jr.
a non-attorney, in pro per,
28844 63rd Street
Bangor, Michigan, 49013
Phone (269) 427-5641
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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 04-1405

[Filed March 21, 2005]

PAUL C. FRENCH, JR., Plaintiff-Appellant,

v.

SHIRLEY JACKSON, Clerk, Van Buren County; RICHARD H. WINSLOW; PAUL FISCHER, Executive Director, Judicial Tenure Commission; JOHN D. FERRY, State Court Administrator; GEORGE N. STEVENSON, Assistant Attorney General; DALE GRIBLER, Sheriff, Van Buren County; ALLAN D. SOBEL, Defendants-Appellees,

SUZANNE U. JOLICOEUR, Licensing Administrator, Board of Accountancy, Department of Licensing, Bureau of Regulatory Services, Department of Consumer & Industry Services; ATTORNEY

GRIEVANCE COMMISSION, Michigan Supreme Court; MIKE COX, Attorney General for the State of Michigan; HAROLD SCHUITMAKER, Attorney for Van Buren County,
Defendants.

ORDER

Before: GUY and ROGERS, Circuit Judges; DOWD, District Judge.*

Paul C. French, Jr., petitions the court to rehear its January 27, 2005, order that affirmed a district court judgment that dismissed his civil rights complaint filed under 42 U.S.C. § 1983.

Upon consideration, the panel concludes that it acted under no misapprehension of law or fact that warrants a rehearing. *See* Fed. R. App. P. 40(a). Accordingly, the petition for a rehearing is denied.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green
Clerk

* The Honorable David D. Dowd, Jr., United States District Judge for the Northern District of Ohio, sitting by designation.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 04-1405

[Filed January 27, 2005]

PAUL C. FRENCH, JR., Plaintiff-Appellant,

v.

SHIRLEY JACKSON, Clerk, Van Buren County; RICHARD H. WINSLOW; PAUL FISCHER, Executive Director, Judicial Tenure Commission; JOHN D. FERRY, State Court Administrator; GEORGE N. STEVENSON, Assistant Attorney General; DALE GRIBLER, Sheriff, Van Buren County; ALLAN D. SOBEL, Defendants-Appellees,

SUZANNE U. JOLICOEUR, Licensing Administrator, Board of Accountancy, Department of Licensing, Bureau of Regulatory Services, Department of Consumer

& Industry Services; ATTORNEY GRIEVANCE COMMISSION, Michigan Supreme Court; MIKE COX, Attorney General for the State of Michigan; HAROLD SCHUITMAKER, Attorney for Van Buren County,
Defendants.

ORDER

Before: GUY and ROGERS, Circuit Judges; DOWD, District Judge.*

Paul C. French, Jr., appeals a district court judgment that dismissed his civil rights action filed under 42 U.S.C. § 1983. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

French filed a 167 page complaint in the district court alleging that he was denied his constitutional rights in the context of state-court civil and criminal proceedings. Plaintiff named as defendants, inter alia, the Van Buren County Clerk as agent for Van Buren County, a private attorney and his firm, the Executive Director of the Judicial Tenure Commission, the State Court Administrator, and an Assistant Attorney General. Plaintiff sought declaratory and injunctive relief and compensatory damages. Many of the named

* The Honorable David D. Dowd, Jr., United States District Judge for the Northern District of Ohio, sitting by designation.

defendants moved to dismiss the complaint; and French responded in opposition and moved to voluntarily dismiss his complaint with respect-to three named defendants. In addition, two of the named defendants moved the court to impose sanctions against plaintiff pursuant to Fed. R. Civ. P. 11, and French responded in opposition. The district court granted defendants' motions to dismiss, granted plaintiff's motion to voluntarily dismiss his complaint in part, dismissed plaintiff's state law claims without prejudice, and granted defendants' motion for sanctions in the amount of $500. French filed a timely notice of appeal.

On appeal, French contends that each of the district court's bases for granting defendants' motions to dismiss was improper, and asserts that the district court erred in concluding that his complaint was frivolous. Defendants respond that the district court's judgment was proper. Upon de novo review, *see Allard v. Weitzman (In re DeLorean Motor Co.)*, 991 F.2d 1236, 1239-40 (6th Cir. 1993), we affirm the district court's judgment essentially for the reasons stated by the district court in its opinion dated February 27, 2004.

The allegations in plaintiff's complaint relate to allegedly improper conduct in state legal proceedings by two state judges who are not named defendants. The district court properly dismissed the case under the abstention doctrine enunciated in *D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983), and *Rooker v. Fid. Trust Co.*, 263 U.S. 413 (1923). The *Rooker-Feldman* doctrine provides that a district court lacks jurisdiction to determine the validity of state court judgments. *See Feldman*, 460 U.S. at 486; *Gottfried v. Med. Planning Servs., Inc.*, 142 F.3d 326, 330 (6th Cir..1998). This is true even with respect to constitutional cases brought under § 1983 because federal courts must give full faith and

credit to the judicial proceedings of state courts. *See Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 85 (1984); *Gottfried,* 142 F.3d at 330. A party aggrieved by a state court decision must appeal the decision through the state courts and then directly to the United States Supreme Court. *See United States v. Owens,* 54 F.3d 271,274 (6th Cir. 1995). Accordingly, the district court correctly concluded that it lacked jurisdiction to review the state legal proceedings at issue in plaintiffs complaint.

Further, the district court correctly concluded that plaintiffs complaint is barred by the applicable statute of limitations to the extent that plaintiffs civil rights claims might not be precluded under the *Rooker-Feldman* doctrine. Plaintiff challenges conduct that culminated in a state felony conviction in February 2000, but plaintiff did not file his complaint until November 2003, beyond Michigan's three-year statute of limitations. *See McCune v. City of Grand Rapids,* 842 F.2d 903,905 (6th Cir. 1988). Under these circumstances, the district court correctly concluded that plaintiff's claims are barred under the statute of limitations.

The district court correctly concluded that plaintiff s civil rights claims are meritless for other reasons as well. In general, plaintiff's claims are not cognizable under § 1983 as ruling on the claims would necessarily imply the invalidity of plaintiffs state felony conviction which has not been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal, or been called into question by a federal court's issuance of a writ of habeas corpus. *Muhammad v. Close,* 124 S. Ct. 1303, 1304 (2004); *Heck v. Humphrey,* 512 U.S. 477, 486-87 (1994); *Schillingv. White,* 58 F.3d 1081, 1085-86 (6th Cir. 1995). The defendant private attorney's actions do not constitute "state action" under § 1983. *Catz v. Chalker,* 142 F.3d 279, 289 (6th Cir. 1998).

The defendant prosecutor is entitled to immunity under the circumstances of this case, *see Kalina v. Fletcher,* 522 U.S. 118, 129-31 (1997), as are the defendant state officials. *See Dubuc v. Mich. Bd. of Law Exam'rs,* 342 F.3d 610, 615-16 (6th Cir. 2003). Accordingly, plaintiffs claims are precluded on these bases as well.

Finally, the district court properly imposed the $500 sanction in this case. In filing a pleading with the court, a party certifies that: (1) the pleading is not being presented for any improper purpose; (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) the allegations have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the denials of factual contentions are warranted on the evidence or are reasonably based on a lack of information or belief. Fed. R. Civ. P. 11 (b). This court reviews a district court's decision to impose sanctions for a violation of Rule 11 for an abuse of discretion. *See Cooter & Gell v. Hartmarx Corp.,* 496 U.S. 384, 405 (1990); *Ridder v. City of Springfield,* 109 F.3d 288,293 (6th Cir. 1997). A district court has broad discretion in deciding the nature and extent of sanctions to impose under Rule 11. *See INVSTFin. Group, Inc. v. Chem-Nuclear Sys., Inc.,* 815 F.2d 391,401 (6th Cir. 1987); *see also Runfola & Assocs. v. Spectrum Reporting II, Inc.,* 88 F.3d 368, 376 (6th Cir. 1996). Thus, this court's review of a Rule 11 sanction is particularly deferential, *see Cooter & Gell,* 496 U.S. at 400-05, and a district court abuses its discretion only if its ruling is predicated on an erroneous interpretation of the law or a clearly erroneous assessment of the evidence. *See id.,* at 405; *Ridder,* 109 F.3d at 293. The test for imposing Rule 11 sanctions is whether the individual's conduct was reasonable

under the circumstances. *See Ridder,* 109 F.3d at 293. In light of the broad discretion afforded the district court and the baselessness of plaintiff s complaint in this case, the district court properly imposed a $500 sanction against plaintiff.

For the foregoing reasons, the district court's judgment is affirmed. See Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green
Clerk

APPENDIX C

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

Case No. 4:03-CV- 164

[February 27, 2004]

PAUL C. FRENCH, JR., Plaintiff,

v.

SHIRLEY JACKSON, *et al.*, Defendants.

JUDGMENT

In accordance with the Opinion of this date;

IT IS HEREBY ORDERED that Plaintiff Paul C. French, Jr.'s Motion for Judgment on the Pleadings (Dkt. No 28) is DENIED and Plaintiff's Motion to (Voluntarily) Dismiss Three Defendants (Dkt. No. 59) is GRANTED.

IT IS FURTHER ORDERED that Defendants John D..Ferry and George N. Stevenson's Motion to Dismiss (Dkt. No. 7) is GRANTED.

IT IS FURTHER ORDERED that Defendants Dale Gribler and Shirley Jackson's Motion to Dismiss (Dkt. No. 12) is GRANTED.

IT IS FURTHER ORDERED that Defendant Richard Winslow' s Motion to Dismiss (Dkt. No. 19) is GRANTED.

IT IS FURTHER ORDERED that Defendant Michigan Attorney Grievance Commission's Motion to Dismiss (Dkt. No. 33) is GRANTED.

IT IS FURTHER ORDERED that Defendant Michigan Judicial Tenure Commission's Motion to Dismiss (Dkt. No. 41) is GRANTED.

IT IS FURTHER ORDERED that Defendants Dale Gribler and Shirley Jackson's Motion for Sanctions is GRANTED and a judgment for Rule 11 sanctions enters in favor of Gribler and Jackson and against Plaintiff Paul C. French, Jr. in the mount of Five Hundred Dollars and No Cents ($500.00).

IT IS FURTHER ORDERED that all federal law claims filed as part of this suit are DISMISSED WITH PREJUDICE and all state law claims are DISMISSED WITHOUT PREJUDICE in accordance with 28 U.S.C § 1367(c)(3).

DATED in Kalamazoo, MI: February 27, 2004

/s/Richard Alan Enslen
RICHARD ALAN ENSLEN
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

Case No. 4:03-CV-164

[February 27, 2004]

PAUL C. FRENCH, JR., Plaintiff,

v.

SHIRLEY JACKSON, *et al.*, Defendants.

OPINION

This matter is before the Court on the Motions to Dismiss Defendants John D. Ferry, George N. Stevenson, Dale Gribler, Shirley Jackson, Richard H. Winslow, Michigan Attorney Grievance Commission, Michigan Judicial Tenure Commission, and Paul Fischer. Also before the Court are *pro se* Plaintiff Paul C. French, Jr.'s Motion for Judgment on the Pleadings and Defendants Dale Gribler and Shirley Jackson's Motion for Sanctions. This Court also ordered the parties to brief whether claims should be dismissed against non-movants-including Suzanne U. Jolicoeur, Mike Cox, Harold Schuitmaker, and Allan D. Sobal. Subsequent to that Order,

the Court received from Plaintiff both a brief arguing that claims against Michigan Judicial Tenure Commission (presumably including the claims against Allan D. Sobal) should not be dismissed and Plaintiffs Motion to (Voluntarily) Dismiss claims against Defendants Jolicoeur, Cox and Schuitmaker. By virtue of the many motions and responses, the parties' arguments have now been fully heard and are now ready for resolution.[1]

This lawsuit stems from Plaintiff's criminal conviction before the Circuit Court for Van Buren County, Michigan in 1999 as well as the conduct of several other civil lawsuits in Van Buren County involving Plaintiff around the same time period. The conviction has resulted in Plaintiff's loss of his certified public accountancy license. The conviction has not been challenged on appeal before the state courts. Plaintiff has filed a 167-page Complaint which argues that state and county officials including Shirley Jackson (the Van Buren County Clerk), Paul Fischer (present executive director of the Judicial Tenure .Commission), John D. Ferry (Michigan. State Court Administrator), and George N. Stevenson (Assistant Attorney General) have violated his constitutional and state law rights[2] by their conduct in connection with his criminal conviction, including their failure to investigate and remedy his allegations of misconduct against the two presiding judges. His Complaint also alleges claims against a private attorney-

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[1] This matter was not scheduled for oral argument due to the issues presented and in order to expedite this matter. *See* W.D. Mich. L. Civ. R. 7.2(d).

[2] Plaintiff has alleged that Defendants violated his constitutional rights under the First Amendment, the Due Process Clause, the Equal Protection Clause, and the Sixth Amendment. Presumably, he is alleging such violations pursuant to 42 U.S.C. § 1983.

Richard H. Winslow. The great bulk of the allegations concern the conduct of the two presiding judges.

Under Federal Rule of Civil Procedure 12(b)(6), a court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. *Conley v. Gibson,* 355 U.S. 41, 45-46 (1957); *Hishon v. King & Spalding,* 467 U.S. 69, 73 (1984). The allegations of the complaint must be construed in the favor of the plaintiff. *Scheuer v. Rhodes,* 416 U.S. 232, 236 (1974). The rules generally require only a "short and plain statement of the claim" and not detailed allegations. *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit,* 507 U.S. 163, 168 (1993). Nevertheless, the complaint "must contain either direct or inferential allegations respecting all the material elements to sustain a recovery under' some viable legal theory.'" *Scheidv. Fanny Farmer Candy Shops, Inc.,* 859 F.2d 434, 436 (6th Cir. 1988) (citation omitted). The Court "need not accept as true legal conclusions or unwarranted factual inferences." *Morgan v. Church's Fried Chicken,* 829 F.2d 10, 12 (6th Cir. 1987).

Several dismissal arguments pertain to all Defendants and mandate dismissal of all federal claims at issue. First of all, Plaintiff's allegations despite the length, are severely lacking in factual allegations alleging any affirmative misconduct against these Defendants. The allegations purport to establish liability on the part of Defendants for failure to intervene or correct errant judicial decisions by the two Van Buren County Circuit Judges involved. However, the law fails-to recognize any affirmative constitutional duty to prevent such a miscarriage of justice. *See DeShaney v. Winnebago Dep't of Soc. Servs.,* 489 U.S. 189, 196-97 (1989). Furthermore, because the suit challenges the outcome of the state court litigations' the *Rocker-Feldman* doctrine prevents the review

of those judgments through the filing of a federal court action. *See Dist of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 482 &n. 16 (1983); *Rookerv. Fidelity Trust Co.,* 263 U.S. 413, 415-16 (1923). Most, if not all of the federal claims asserted, are also barred by the applicable three-year statute of limitations. *See* Mich. Comp. Laws § 600.5805(8); *Carroll v. Wilkerson,* 782 F.2d 44, 45 (6th Cir. 1986).

Likewise, as to Plaintiff's federal claims concerning his criminal conviction, these are also barred by the doctrine in *Heck v. Humphrey,* 512 U;S. 477, 486-89 (1994). *See also Preiser v. Rodriguez,* 411 U.S. 475,488-90 *(1973);Edwards v. Ballistics,* 520 U.S. 641,646 (1997). Similarly, all of Plaintiff" s federal law claims asserting procedural due process violations resulting in property deprivations fail to state a cause of action. As for the allegations implying a negligent or unintentional taking of property without due process, this is simply not actionable under § 1983. *See Daniels v. Williams,* 474 U.S. 327, 328 (1986). As for the allegations implying intentional takings without due process, those are not actionable unless it is pleaded and proven that state law remedies are inadequate. *See Hudson-v. Palmer,* 468 U.S.. 517, 533-36 (1984); *Parratt v. Taylor, 451* U.S. 527, 543-44 (1981). Given the absence of allegations supporting an inference that available state remedies are inadequate, these allegations fail to state a claim. *See Hahn v. StarBank, "190* F.3d 708, 716 (6th Cir. 1999).

Furthermore, apart from these rationales, which are applicable to all of Plaintiff' s federal law claims, there are also several particular reasons for dismissing claims against particular Defendants.

As to the federal law claims against defendant Winslow, these claims are properly dismissed since his actions as a

private attorney do not constitute "state action" under 42 U.S.C. § 1983: *See Polk County v. Dodson, 454* U.S. 312, 318-19 (1981).

Regarding the federal law claims against Defendant Stevenson, these claims are properly dismissed due to his prosecutorial immunity. *See Imbler v. Pachtman,* 424 U.S. 409, 431 (1976); *Cooper v. Parrish,* 203 F.3d 937, 946-47 (6th Cir. 2000). The claims against Defendant Ferry are also properly dismissed due to qualified immunity in that Plaintiff has failed to allege conduct on his behalf which was a clearly established violation of a constitutional right at the time of the conduct. *See Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982); *Long v. Norris,* 929 F.2d 1111, 1115 (6th Cir. 1991).

Regarding the claims against the Michigan Judicial Tenure Commission and the Michigan Attorney Grievance Commission, these Commissions are agencies of the state of Michigan and are protected from section 1983 liability by the Eleventh Amendment to the United States Constitution. *See Pennhurst State Sch. & Hosp. v. Halderman,* 465 U.S. 89, 100, 104 *(1984); Brotherton v. Cleveland,* 173 F.3d 552, 560,61 (6th Cir. 1999); *Dubuc v. Mich.Bd. of Law Exam 'rs,* 342 F.3d 610, 615 (6th Cir. 2003).

Regarding Plaintiff' s Motion to (Voluntarily) Dismiss claims against Defendants Jolicoeur, Cox and Schuitmaker, this Motion is proper under Federal Rule of Civil Procedure 4l(a) and-is timely. Therefore, it will be granted and those claims dismissed.

This leaves unresolved only Plaintiff's state law claims--which the Court regards as quintessentially matters of state law. As to those claims, the Court has supplementary jurisdiction pursuant to 28 U.S.C. § 1367. Nevertheless, since

all federal law claims asserted will be dismissed, federal law authorizes this Court to decline to exercise jurisdiction over the state law claims and dismiss them without prejudice pursuant to section 1367 (c)(3). *See Carnegie-Mellon Univ. v. Cahill,* 484 U.S. 343,357 *(1988); Long v. Bando Mfg. of Am., Inc.,* 201 F.3d 754, 761 (6thCir. 2000). This will be done because the interests of justice would be best served by the state courts' resolution of the remaining state law issues.[3]

Having resolved this suit, the Court must finally resolve Defendants Gribler and Jackson's Motion for Sanctions. The Motion requests sanctions on the basis that Plaintiff's legal contentions in his Complaint are not "warranted by existing law." Fed. R. Civ. P. 11(b)(2). In[4] particular, Defendants argue that the Complaint was not warranted either by existing law or an objective good faith argument for the extension of existing law for the reasons given by this Court for dismissal.

The applicable standard in reviewing pleadings is one of objective reasonableness under the circumstances. *Business Guides, Inc. v. Chromatic Communications Enterprises; Inc.,* 498 U.S. 533, 534 (1991). This standard is applied equally to *pro se* filings. *See Danvers v. Danvers,* 959 F.2d 601,604-05 (6th Cir. 1992); Fed. R. Civ. P. 1 l(c). In accordance with that standard, the Court finds that Plaintiff's Complaint against Defendants was frivolous. In particular, there was no

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[3] Given the dismissal of Plaintiff's claims, his Motion for Judgment on the Pleadings is also properly denied.

[4] Though the issue is not contested, the Motion shows that Defendants have met the "safe harbor" requirement of Rule 1 l(c)(1)(A) by first filing the Motion with Plaintiff in order to give .him an opportunity to withdraw his Complaint at least21 days in advance of the Motion's filing with the Court.

objectively reasonable basis for the claims asserted in light of the *Rocker-Feldman* doctrine and the doctrine in *Heck*.

Having so determined, this Court must also determine the appropriate sanction to impose for the filing of the frivolous Complaint. The Sixth Circuit Court of Appeals has set forth the pertinent factors to consider in the case *of Jackson v. Law Firm,* 875 F.2d 1224, 1229-30 (6th Cir. 1989). Those factors are: (1)deterrence; (2) compensation; (3) the extent to which the moving party has mitigated his or her losses; and (4) the non-moving party's ability to pay the sanction. *Id.* Of these factors, the most significant is deterrence. "Because deterrence is the primary goal, the minimum necessary to deter the sanctioned party is the proper award, even if this amount does not fully compensate the moving party." *Id.* at 1229.

In this case, there is an obvious need for some deterrence. Plaintiff has filed a massive Complaint naming many parties without any objective legal basis for proceeding. Further, when confronted with obvious arguments requiring dismissal, he chose to ignore them rather than assent to dismissal. Compensation is also clearly proper, to some degree. Given the length of the Complaint, the length of Defendants Gribler and Jackson's Motion to Dismiss and Motion for Sanctions, and the usual billing rates for attorneys with large firms in this area, they have obviously expended very substantial monies in attorney fees. As for mitigation, Defendants have mitigated their losses by seeking prompt dismissal of the suit. Regarding Plaintiff' s ability to pay, this action was not filed *in forma pauperis* nor has Plaintiff ever argued that he lacks an ability to pay. Therefore, a monetary sanction will be awarded. Notwithstanding, this Court will limit the monetary sanction to the sum of $500. This is clearly only a small portion of the unnecessary litigation expenses with which

Defendants have been saddled. Nevertheless, in the Court's judgment, it is the minimal sanction necessary to deter Plaintiff and impress the lesson that the filing of frivolous suits is an expensive and none too rewarding pastime.

According, a Judgment shall issue granting dismissal as to all claims asserted in this action and imposing Rule 11 sanctions against Plaintiff in the amount of $500.

DATED in Kalamazoo, MI: February 27, 2004
/s/Richard Alan Enslen
RICHARD ALAN ENSLEN
UNITED STATES DISTRICT JUDGE

APPENDIX E

AFFIDAVIT

STATE OF MICHIGAN)
) SS.
VAN BUREN COUNTY)

1. I, Jessie N. Olson, being duly sworn, state:

2. I am the attorney for Paul C. French in the referenced criminal matter.

3. Michigan Assistant Attorney General George Stevenson prosecuted this case.

4. As part of the investigation before charges were filed, and before I was involved, the AAG's office seized many file cabinets full of documents and did download many discs from related computers.

5. Being sure that the documents that would prove Mr. French's innocence were among those seized, I made several attempts to arrange time to go through the boxes the AAG had stored the files in.

6. On each occasion not all the boxes were present, and there appeared to be no rational for how the documents were stored or any evidence that they had been systematically reviewed. It was made physically impossible to locate any specific desired document. To

make matters worse, each time I was placed under strict time restraints by the AAG, and was forced to drive several hours each way on each occasion. For instance, it would take an entire day to have even a few hours of research time before the office was closed, and with the massive number of un-inventoried and randomly stored documents--AND NOT EVEN HAVING ALL BOXES PRESENT ON ANY GIVEN OCCASION--conditions were made so that while it appeared the AAG was cooperating with discovery, while in actual fact it was impossible to have any assurance of locating any particular needed document.

7. In addition, apparently many documents were lost or misfiled and never found.

8. At trial, in spite of several objections and warnings from the judge, AAG Stevenson repeatedly vouched for his witnesses, stating that they had no reason to lie, a fact he knew to be untrue because he knew Mr. French had filed embezzlement charges against many of them.

9. AAG Stevenson did this under cover of an order from the trial judge making any prior criminal acts of the witnesses inadmissible, because there had been no convictions. There was some evidence which suggested that there were no convictions because AAG Stevenson squelched any investigation against his witnesses.

10. AAG Stevenson admitted that he was obligated to report deal trading testimony in exchange for dismissing potential criminal complaints against his witnesses, while reiterating no such deal had been

made. Later there was colloquial evidence that supported the position just such an arrangement had indeed existed.

11. It is my opinion that AAG Stevenson repeatedly misled the court and the jury as to the facts of this case. I still believe quite strongly -both professionally and personally -that the actions of Mr. French, while not wise, were in no way criminal. The issues involved, however, involved very complicated accounting practices-easily misinterpreted by AAG Stevenson; and easily misunderstood by the court and jury.

12. In conclusion, by all these various acts, the Judicial Process was violated. While he could have appealed, Mr. French understood that even wining the appeal would bring it back to the same judge who had expressed in his own handwriting, his personal bias and an inability to find Mr. French credible. Mr. French believed such action could result in a much longer and stricter sentence that at his age and under his medical condition could easily be a death sentence.

13. Further Affiant says not.

Dated: June 1, 2000

Subscribed and sworn before me on 6/1/05

/s/_____
Notary Public Van Buren County
My Commission expires 6/8/08

[SEAL]

AFFIDAVIT

STATE OF MICHIGAN)
) SS.
VAN BUREN COUNTY)

1. I, Jessie N. Olson, being duly sworn, state:

2. I am the attorney for Paul C. French in the referenced criminal matter.

3. It was and is, my firm conviction that Judge William C. Buhl's self-expressed bias against the credibility of Mr. French necessitated that he recuse himself from presiding over Mr. French's cases.

4. I base this upon the Judicial Canons, which mandate recusal to prevent even "the appearance of injustice"

5. It should be noted that Judge Buhl has recused himself in other matters with much less of an appearance of potential bias.

6. In addition, it has been my experience gained over many years of observing Judge Buhl that he has in all other cases exhibited great impartiality and an exemplary judicial temperament, thus making the actions against Mr. French that much more inexplicable and worrisome.

7. During the course of Mr. French's criminal case I made no less that three oral motions for recusal and one written motion, and a full hearing was held on the matter. Judge Buhl denied the motion each time.

Dated: June 1, 2000

Subscribed and sworn before me on 6/1/05

/s/_____
Notary Public Van Buren County
My Commission expires 6/8/08

[SEAL]

APPENDIX F

SEE FOLD OUT EXHIBIT

(Order of Disqualification)

STATE OF MICHIGAN
JUDICIAL CIRCUIT
JUDICIAL DISTRICT
COUNTY PROBATE COURT

ORDER OF DISQUALIFICATION

CASE NO. 99-46-044 CK

Court name and address

Court telephone no.

Plaintiff name(s) and address(es)
Paragon Bank & Trust

v

Defendant name(s) and address(es)
Paul C. French, Jr. and Evergreen Manor, Inc., Wesco Distribution, Inc, Jaco's Asphalt, Inc., et al

Plaintiff's attorney, bar no., address, and telephone no.
Patrick Hogan
Kenneth Doss

Defendant's attorney, bar no., address, and telephone no.
Norman C. Witte
James H. Geary
Harold Schuitmaker
Trudy Luedecking-
Vern Steffel, Jr.

IT IS ORDERED:

Judge William C. Buhl P 11366 on motion of
Bar no.
himself, is disqualified from hearing this case for the following reason, pursuant to MCR 2.003:

- ☐ a. Interested as a party.
- ☒ b. Personally biased or prejudiced for or against a party or attorney.
- ☐ c. Consulted or employed as an attorney in the matter in controversy.
- ☐ d. Was a partner of a party, attorney for a party, or a member of a law firm representing a party within the preceding two years.
- ☐ e. Related within the third degree (civil law) of consanguinity or affinity to a person acting as an attorney or within the sixth degree (civil law) to a party.
- ☐ f. The judge's spouse or minor child owns a stock, bond, security, or other legal or equitable interest in a corporation which is a party, unless specifically excepted by MCR 2.003(B)(6)(a)(b) or (c).
- ☒ g. Other: (specify) The issue of Paul French's credibility creates an inability of the Cou to be impartial due to prior cases where he testified in a non-jury case.

Date 12-7-99

Judge Bar no.

INTERNAL REASSIGNMENT REQUEST

Judge Paul E. Hamre P32636 has been chosen by lot from the judges not
Name Bar no.
disqualified in this case. I request that this case be reassigned to this judge.

Date

Court Administrator or Clerk of the Court

Reassignment approved as requested.

12-7-99

Date

Chief Judge Bar no.

IF ALL JUDGES OF THIS COURT ARE DISQUALIFIED – SEE REVERSE SIDE FOR REASSIGNMENT TO A JUDGE OF ANOTHER COURT

C 264 (4/87) ORDER OF DISQUALIFICATION

BEST AVAILABLE COPY

APPENDIX G

STATE OF MICHIGAN
JUDICIAL TENURE COMMISSION

March 20, 2000

Paul C. French, Jr.
28840 63rd Street
Bangor, MI 49013

RE: Grievance No. 00-12636

Dear Mr. French:

Please be advised that the Michigan Judicial Tenure Commission has completed the investigation conducted at your request, and determined that there is no basis on which to file a formal complaint or take any other action against the named judge.

The Commission's sole authority is to determine whether there is evidence of judicial misconduct, as defined by law, and in appropriate cases commence and pursue disciplinary proceedings. The Commission is not empowered to act as an appellate court or grant any relief to those who file requests for investigation. Accordingly, our file in this matter has been closed.

Very truly yours,

/s/
Allen D. Sobel
Executive Director

EXHIBIT H

STATE OF MICHIGAN

IN THE CIRCUIT COURT OF THE COUNTY OF INGHAM
Case No: 99-90073-CZ

EVERGREEN MANOR, INC., a Michigan Corporation, and PAUL C. FRENCH, JR., an individual
Plaintiffs,

v.

PAUL CARTWRIGHT et al.
Defendants.

REQUEST FOR ADMISSIONS TO PAUL FRENCH, JR.

NOW COME your Defendants BASIL SCOTT and TIM HAKKEN by and through their attorneys, CUMMINGS, McCLOREY, DAVIS & ACHO, P.L.C. and, pursuant to MCR 2.312, make the following requests for admissions with in twenty-eight (28) days after service of this request. Pursuant to said rule, admissions as to the truth of a matter may relate to Statements or opinions of fact or application of law to fact, including request presenting genuine issues for trial and may not be objected to upon those grounds.

1. Please admit that Paul French, Jr. believes God speaks him.
2. Please admit that Paul French Jr. believes-that God speaks to him about decisions he must make.

3. Paul French, Jr. Believes that God speaks to him about business decisions.

4. Paul French Jr. has remarked to others that he listens to God in making business decisions.

5. Paul French, Jr. has remarked to Tim Hakken that God has spoken to him regarding business decisions involving finances relating to the operation of Evergreen Manor, Inc.

Respectfully submitted,

CUMMINGS, McCLOREY, DAVIS & ACHO, P.L.C.

/s/ Richard H. Winslow
Richard H. Winslow (P22449)
25 West Michigan Avenue
Suite 909
Battle Creek, MI 49017

Date: July 26, 1999

APPENDIX I

Court of Appeals, State of Michigan

Docket No.219940
LC No.98-044972-CK

Paragon Bank & Trust	)
	)
v.	)
	)
Paul C French Jr	)
	)

ORDER

Richard A. Bandstra Presiding Judge

William B. Murphy
Jeffrey G. Collins
Judges

The Court, acting under MCR 7.216(A)(10), orders that:

The claim of appeal is DISMISSED for lack of jurisdiction because the May 10, 1999 order is not a final order for the reason that claims are still outstanding. See MCR 2.604(A) and 7.202(8)(a)(i). The Court finds that this action is not a receivership or similar action, meaning that the trial court was incorrect in attempting to certify the order as final when other claims remained pending. This certification is not binding on

this Court. See *McCarthy & Associates v Washburn,* 192 Mich 676 (1992). As a result, the order in question is appealable to this Court on leave granted under MCR 7.205. See MCR 7.203(B)(1).

A true copy entered and certified by Carl L. Gromek, Chief Clerk, on 8/10/99

/s/ Carl L. Gromek
Chief Clerk

APPENDIX J

IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: Paragon bank & Trust v. Paul C. French Jr.
Docket No. 222451
L.C. No. 98-044972-CK

Richard A. Bandstra, Chief Judge, acting under MCR 7.203(F)(1) and MCR 7.216(A)(10), orders:

The claim of appeal is DISMISSED for lack of jurisdiction because the May 10, 1999, order coupled with the September 7, 1999 order is not a final order for the reason that claims are still understanding. See MCR 2.604(A) and 7.202(8)(a)(I). An order that severs claims is neither a final order, nor does it convert an earlier order into a final order, since it fails to "adjudicate the rights and liabilities of all the parties" as is required under MCR 7.202(8)(a)(I). As a result, the order in question is appealable to this Court only on leave granted under MCR 7.205. See MCR 7.203(B)(1).

A true copy entered and certified by Carl L. Gromek, Chief Clerk, on 10/20/99.

/s/ Carl L. Gromek
Chief Clerk